

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: March 26, 2021

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ESTATE OF NORMA ANN GOLD	*	
<i>by its personal representative</i>	*	
JOHN GOLD,	*	No. 19-402V
	*	Special Master Sanders
Petitioner,	*	
	*	UNPUBLISHED
v.	*	
	*	
SECRETARY OF HEALTH	*	Attorneys' Fees and Costs
AND HUMAN SERVICES,	*	
	*	
Respondent.	*	
* * * * *	*	

Daniel H. Pfeifer, Pfeifer, Morgan & Stesiak, South Bend, IN, for Petitioner;
Colleen C. Hartley, United States Dep't of Justice, Washington, DC, for Respondent.

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

On March 15, 2019, the Estate of Norma Ann gold by its representative, John Gold, ("Petitioner") filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §300aa-10 et seq. (2012). Petitioner alleged that the influenza vaccine Ms. Gold received on December 2, 2010, caused her to develop Guillain-Barré syndrome ("GBS"), and that Ms. Gold died as a consequence of the GBS she contracted due to the administration of the influenza vaccine. Pet. at 1, 11 (ECF No. 1). On September 8, 2020, the

¹ The undersigned intends to post this Ruling on the United States Court of Federal Claims' website. **This means the Ruling will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

parties filed a proffer, which the undersigned adopted as her decision awarding compensation on October 28, 2020. ECF No. 24.

On December 7, 2020, Petitioner filed a motion for attorneys' fees and costs. ECF No. 27 ("Fees App."). Petitioner requests total final attorneys' fees and costs in the amount of \$18,284.77, representing \$16,326.25 in attorneys' fees and \$1,958.52 in attorneys' costs. Fees App. at 1. Respondent responded to the motion on December 9, 2020, indicating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Resp't's Resp. at 2. ECF No. 28. Petitioner did not file a reply thereafter.

This matter is now ripe for consideration.

I. Reasonable Attorneys' Fees and Costs

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). The Federal Circuit has approved the lodestar approach to determine reasonable attorneys' fees and costs under the Vaccine Act. *Avera v. Sec'y of Health & Human Servs.*, 515 F.3d 1343, 1348 (Fed. Cir. 2008). This is a two-step process. *Id.* First, a court determines an "initial estimate . . . by 'multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.'" *Id.* at 1347–48 (quoting *Blum v. Stenson*, 465 U.S. 886, 888 (1984)). Second, the court may make an upward or downward departure from the initial calculation of the fee award based on specific findings. *Id.* at 1348.

It is "well within the special master's discretion" to determine the reasonableness of fees. *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521–22 (Fed. Cir. 1993); *see also Hines v. Sec'y of Health & Human Servs.*, 22 Cl. Ct. 750, 753 (1991). ("[T]he reviewing court must grant the special master wide latitude in determining the reasonableness of both attorneys' fees and costs."). Applications for attorneys' fees must include contemporaneous and specific billing records that indicate the work performed and the number of hours spent on said work. *See Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316–18 (2008). Such applications, however, should not include hours that are "excessive, redundant, or otherwise unnecessary." *Saxton*, 3 F.3d at 1521 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)).

Reasonable hourly rates are determined by looking at the "prevailing market rate" in the relevant community. *See Blum*, 465 U.S. at 895. The "prevailing market rate" is akin to the rate "in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Id.* at 895, n.11. Petitioners bear the burden of providing adequate evidence to prove that the requested hourly rate is reasonable. *Id.*

a. Hourly Rate

The decision in *McCulloch* provides a framework for consideration of appropriate ranges for attorneys' fees based upon the experience of the practicing attorney. *McCulloch v. Sec'y of Health & Human Servs.*, No. 09-293V, 2015 WL 5634323, at *19 (Fed. Cl. Spec. Mstr. Sept. 1, 2015), *motion for recons. denied*, 2015 WL 6181910 (Fed. Cl. Spec. Mstr. Sept. 21, 2015). The

Court has since updated the *McCulloch* rates, and the Attorneys' Forum Hourly Rate Fee Schedules for 2015–2016, 2017, 2018, 2019, and 2020 can be accessed online.³

Petitioner requests the following hourly rates for the work of his counsel: for Mr. Daniel Pfeifer, \$450.00 per hour for all work performed (2018-2020); for Mr. Jerry McKeever, \$350.00 per hour for all work performed (2018-2019); and for Mr. Peter Hamann, \$250.00 per hour for all work performed in 2020. These rates require further discussion.

Some of the requested rates exceed what the undersigned and other special masters have previously awarded counsel for their Vaccine Program work. *See Muensterman v. Sec'y of Health & Human Servs.*, No. 18-714V, 2019 WL 6250472, at *2 (Fed. Cl. Spec. Mstr. Oct. 11, 2019) (awarding Mr. Pfeifer \$400.00 per hour for work performed in 2018 and 2019 and Mr. McKeever \$250.00 per hour for work performed in 2018 and 2019); *Reed v. Sec'y of Health & Human Servs.*, No. 18-884V, 2020 WL 1896707 (Fed. Cl. Spec. Mstr. Mar. 4, 2020) (same). The undersigned will apply these previously established rates, resulting in a reduction of \$2,415.00.

Concerning Mr. Pfeifer's 2020 rate of \$450.00 per hour and Mr. Hamann's 2020 rate of \$250.00 per hour, the undersigned finds them to be reasonable and shall award them herein.

b. Reasonable Number of Hours

Attorneys' fees are awarded for the "number of hours reasonably expended on the litigation." *Avera*, 515 F.3d at 1348. Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton*, 3 F.3d at 1521 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)).

Upon review, the undersigned finds the overall hours billed to be reasonable. Counsel has provided sufficiently detailed descriptions for the tasks performed, and upon review, the undersigned does not find any of the billing entries to be unreasonable. Accordingly, Petitioner is entitled to final attorneys' fees in the amount of \$13,911.25.

c. Attorney Costs

Like attorneys' fees, a request for reimbursement of attorneys' costs must be reasonable. *Perreira v. Sec'y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner requests a total of \$1,958.52 in attorneys' costs, comprised of acquiring medical records, the Court's filing fee, and finance charges incurred from the use of AdvoTrac, a case expense funding service. Fees App. Ex. 3. Petitioner has provided adequate documentation supporting these costs and they are mostly reasonable in the undersigned's experience. However, the finance charges related to AdvoTrac are non-reimbursable because the Vaccine Program does not reimburse interest charges. *See Kleva v. Sec'y of Health & Human Servs.*, No. 17-749V, 2019 WL 2156432, at *2 (Fed. Cl. Spec. Mstr. Mar. 18, 2019); *Kollias v. Sec'y of Health & Human Servs.*, No. 16-868V, 2018 WL

³ The OSM Fee Schedules are available at: <http://www.cofc.uscourts.gov/node/2914>. The hourly rates contained within the schedules are updated from the decision in *McCulloch*, 2015 WL 5634323.

6301793, at *3 (Fed. Cl. Spec. Mstr. Oct. 2, 2018). This results in a reduction of \$286.68. Petitioner is therefore awarded final costs of \$1,671.84.

II. Conclusion

In accordance with the Vaccine Act, 42 U.S.C. §15(e) (2012), the undersigned has reviewed the billing records and costs in this case and finds that Petitioner's request for fees and costs, other than the reductions delineated above, is reasonable. Based on the above analysis, the undersigned finds that it is reasonable to compensate Petitioner and his counsel as follows:

Attorneys' Fees Requested	\$12,295.20
(Reduction to Fees)	- (\$2,415.00)
Total Attorneys' Fees Awarded	\$13,911.25
Attorneys' Costs Requested	\$1,958.52
(Reduction of Costs)	- (\$286.68)
Total Attorneys' Costs Awarded	\$1,671.84
Total Attorneys' Fees and Costs	\$15,583.09

Accordingly, the undersigned awards a lump sum in the amount of \$15,583.09, representing reimbursement for Petitioner's attorneys' fees and costs, in the form of a check payable to Petitioner and Petitioner's counsel, Mr. Daniel Pfeifer.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.⁴

IT IS SO ORDERED.

s/Herbrina D. Sanders
Herbrina D. Sanders
Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.